IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.268 OF 2001

Parshuram Vasudeo Pawar ...Appellant

vs.

Dhayareshwar Engineering P.Ltd. ...Respondent

Mr.N.A.Kulkarni for the Appellant

CORAM: A.S.OKA,J.
DATE : MARCH 8,2007.

ORAL JUDGMENT:

1. Heard Advocate for the Appellant. Notice for final disposal is already issued.

2. Application for compensation made by the Applicant before the learned Commissioner for Workmen's Compensation Act,1923 has been dismissed by the learned Commissioner by holding that the Appellant is not a Workman.

3. The learned Advocate for the Appellant has invited my attention to the Affidavit filed by the Appellant before the learned Commissioner. His submission is that the Respondent is a factory within a meaning of Factories Act. He invited my attention to the assertions made in the Affidavit of the Appellant in which it is stated that initially the Applicant was appointed as 'Typist cum Clerk' with effect from 15th May 1994 and he was confirmed in service with effect from 1st

January 1995. Subsequently, the Appellant was appointed as a Store Keeper and he was doing the work for the purpose of business of the Respondent. The learned Advocate for the Appellant placed reliance on the decision of this court in case of Superintending Engineer, M.S.E.B. Circle Office and others vs. Susheela V. Dhongade and others [2004 (5) Bombay Cases Reporter page 37) as well as the decision of a Division Bench of court in the case of Shrinath J. Balwar Vs. Municipal Corporation of Greater Bombay [1992 (1) Mh.L.J. page 53). He submitted that the learned Commissioner has not at all considered the evidence in the form of Affidavit and the provisions of section 2(1) (n) and Schedule II of the said Act of 1923.

4. I have considered the submissions. It is apparent from the impugned order that the learned Commissioner has not at all considered the evidence led by the Appellant and the material placed by the Appellant on record. The learned Judge has proceeded on assumption that the person appointed in the clerical category is excluded from the definition of the term ‘Workman’. The approach of the learned Judge is completely erroneous. As the learned Judge has dismissed the main application on a preliminary ground, this is a fit case where the impugned order should be set aside and the matter should be remanded to the learned Commissioner for a fresh adjudication in the light of the evidence on record.

5. Hence, I pass the following order :

i) Impugned Judgment and Order dated 3rd February 2001 is quashed and set aside.

ii) The Claim Application bearing W.C.No.155 of 1996 is restored to file of the learned Commissioner for Workmen’s Compensation and the First Labour Court, Pune.

iii) The learned Commissioner will decide the Claim Application afresh as expeditiously as possible and preferably on or before 31st December 2007.

iv) Appeal is partly allowed in above terms.

v) Writ to be sent immediately.

JUDGE